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MAY 23 1994

Before The
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

PETITION FOR RELIEF FROM UNJUST AND
UNREASONABLE DISCRIMINATION IN THE
DEPLOYMENT OF VIDEO DIALTONE FACILITIES

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RM-8491

PETITION FOR RELIEF OF
CENTER FOR MEDIA EDUCATION
CONSUMER FEDERATION OF AMERICA
OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
NATIONAL COUNCIL OF LA RAZA

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May 23, 1994

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SUMMARY

The Center for Media Education, the Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People and the National Council of La Raza have found indications of "electronic redlining" in the applications of four Regional Bell Operating Companies to construct video dialtone facilities. The applicant companies propose to bypass many lower income and/or minority communities in their initial deployment of video dialtone, while serving areas contiguous to those communities. This discriminatory practice amounts to denial of a service which may be essential to the economic and social livelihood of the community that is redlined.

Video dialtone construction is a primary step in the development of our national information infrastructure. It has the potential to compete with, and even to supplant existing telephone service, broadcast television, and cable television. And due to its interactive possibilities, video dialtone offers the potential for greater participation in the democratic process. Thus, it is imperative that this advanced network be constructed in a nondiscriminatory manner so that all voices have a reasonable opportunity to speak and be heard.

However, if redlining is allowed, many of the public interest benefits of video dialtone will not be obtained. Increasingly, information means economic, social, and political power. If substantial segments of the population, particularly

those of lower-income or minority status, are denied access to advanced networks, America will be divided into the technologically-wealthy and a technologically-disadvantaged underclass, and we will all suffer for it.

The Commission has recently received a large number of applications from Regional Bell Operating Companies (RBOCs) to construct large-scale video dialtone facilities in major metropolitan areas. As described in the attached Affidavit, Dr. Mark Cooper has examined at least two applications from each of four RBOCs. He found a clear and systematic pattern of not serving low income and minority areas.

This pattern is inconsistent with the goal of universal service established in Section 1 of the Communications Act. It also violates Section 202(a)'s prohibition against unreasonable discrimination in the provision of communications facilities. In addition, the public interest goals articulated by the Commission in authorizing video dialtone service would be undermined if video dialtone facilities are not constructed in a nondiscriminatory manner.

Thus, petitioners call on the Commission to ensure that progress is made towards the goal of universal service, and that video dialtone is deployed equitably with respect to racial, ethnic or income status. To achieve this, the Commission should:

- (1) issue a policy statement announcing its commitment to the goal of universal video dialtone service, and to nondiscriminatory deployment at each phase of construction;

- (2) issue an interpretive rule clarifying that applicants seeking to construct and operate video dialtone facilities are already required to adhere to the objectives of universal service and the avoidance of discrimination on the basis of income level, race, or ethnicity; and
- (3) adopt a procedural rule instructing its staff to identify and bring to its attention applications which appear to violate these objectives, and remand these applications so that the telephone common carriers have the opportunity to conform them to the existing objectives.

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To: The Commission

PETITION FOR RELIEF

The Center for Media Education, the Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People, and the National Council of La Raza (collectively "Petitioners"), respectfully petition the Commission to adopt:

(1) a policy statement announcing its commitment to the goals of universal video dialtone service and nondiscriminatory deployment at each phase of construction; (2) an interpretive rule clarifying that applicants seeking to construct and operate video dialtone facilities pursuant to Section 214 of the Communications Act of 1934, as amended,¹ are already required to adhere to the objectives of universal service and avoidance of discrimination on the basis of income level, race, or ethnicity; and (3) a procedural rule instructing its staff to identify and bring to its attention applications which appear to violate these objectives, and to remand these applications to afford the

¹ 47 U.S.C. § 214.

telephone common carriers the opportunity to bring them into conformity.

I. Introduction

The introduction of video dialtone presages a new information age, and its widespread deployment has the potential to transform the way Americans live. Carrying video, audio, and data on two-way, high-capacity wires, video dialtone may supplant other traditional forms of data transmission -- including telephone, cable television, and broadcasting -- while adding previously unheard of services.

But such technological acceleration in the absence of sound policy governing its growth can leave damage in its wake. A nation whose economic life relies so heavily on information, and will to an even greater extent in the future, cannot afford a citizenry divided by its access to information. Inequitable access could widen the social, political and economic disparity between the wealthy and the poor. Already, traditional forms of communication, including newspapers and books, are increasingly converging into electronic formats. As switched, broadband networks like video dialtone replace older technologies, those who are not connected to the network will experience a severe information deficit. Almost inevitably, this lack of access will restrict the educational, employment, and political opportunities of the technologically disadvantaged, who, if the pattern of video dialtone proposals holds true, are likely to be the poor

and/or minorities.

Surely, the public interest benefits of a national information infrastructure are dampened without universal service. Assuming that the Commission will achieve its objectives of nondiscriminatory access for programmers and universal service, the video dialtone platform could spur the development of an unrivaled array of programs and services. Potentially interactive, video dialtone may have its greatest applications in areas such as education and medicine, where services such as distance learning and remote medical diagnosis have been highly touted.² Programming diversity and the increased inter-communication resulting from universal service could benefit all Americans, regardless of race, ethnicity, or income, by helping ameliorate the differences that threaten to divide us while strengthening our social fabric.

Additionally, should interactivity become technologically and economically feasible, and the future predictions of some video dialtone proponents come to pass,³ universal video dialtone service could promote important First Amendment values by increasing participation in the democratic process. Accordingly, one's ability to participate in voting, school board meetings,

² See, e.g., Application of the Ameritech Operating Companies For authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct, operate, own and maintain, a video dialtone system within geographically defined areas in Illinois, WPC-6929, Jan. 31, 1994, at 4.

³ Petitioners are taking no position on the technological capabilities of proposed video dialtone facilities.

local government, and other forms of public debate could be limited without access to advanced networks. This inability to participate is detrimental not only to those who find their speech muted, but to the rest who are never exposed to a full complement of ideas and viewpoints. Only universal service can ensure robust debate and equitable participation in our democracy, which includes both the right to receive information and the right to speak and be heard.

Universal service cannot occur overnight, which is why it is essential that video dialtone facilities are constructed and deployed to communities that are reasonably representative of the larger areas the local telephone companies serve. Petitioners believe it is now incumbent on the Commission to state emphatically that a consistent practice of excluding from service, or significantly delaying service to, poor and/or minority communities is anathema to the public interest and will not be tolerated.

II. Background

In 1987, the Commission began the process of reassessing its telephone company-cable television cross-ownership restrictions.⁴ At the time, local exchange carriers were prohibited from delivering video programming to the public in their telephone

⁴ Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58, Notice of Inquiry, 2 FCC Rcd 5092 (1987).

service areas, either directly or through an affiliate.⁵ Two years ago, the Commission modified its rules to allow local telephone companies to participate in the market for video delivery through video dialtone.⁶

While determining that video dialtone deployment, in general, is in the public interest, the Commission stated that upon receiving video dialtone applications, it would more closely evaluate whether a particular proposal serves the public interest.⁷ The Commission has since accepted a number of § 214⁸ applications for the construction and operation of video dialtone facilities. Five applications for the construction of facilities have already been approved and seventeen are pending.⁹ Companies filing applications include Bell Atlantic, U S WEST, Ameritech, and Pacific Bell. Most of the pending applications target larger metropolitan areas.

⁵ These restrictions were set forth in Sections 63.54-63.58 of the Commission's rules.

⁶ Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992), appeals pending sub nom. Mankato Citizens Telephone Co., v. FCC, Nos. 92-1404, et al. (D.C. Cir. Sept. 9, 1992) ("Second Video Dialtone Order").

⁷ Second Video Dialtone Order, 7 FCC Rcd at 5819-20.

⁸ 47 U.S.C. § 214(a) reads in part: "No carrier shall undertake the construction of a new line . . . unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction . . . of such additional . . . line."

⁹ Christopher Stern, "Hundt Has Dialtone on Fast Track," Broadcasting & Cable, Apr. 18, 1994, at 6.

While examining the various applications, petitioners noticed a pattern in the proposals and maps provided by the companies. Specifically, telephone common carriers appear to be avoiding lower income areas and areas with a high concentration of minority residents in their service plans.

Petitioners engaged Dr. Mark Cooper, one of the country's leading experts in telecommunications economics and policy. He examined at least two applications from each of four Regional Bell Operating Companies.¹⁰ Using a combination of data and maps provided by the applicant, telephone company marketing data, and census tract data, Dr. Cooper concluded that there is "a clear and systematic pattern of not serving some lower income areas, which turn out to be much more heavily minority areas."¹¹

Dr. Cooper found that in some situations, the unserved areas comprise a portion which is carved out of the center of a city.¹² For example, the map of U S WEST's scheduled deployment in Denver depicts a large slice running through the center of the city where video dialtone facilities will not be initially constructed.¹³ Lower income and/or minority persons are heavily concentrated in the excluded area. This pattern suggests the

¹⁰ He examined applications from Ameritech (Indianapolis and Chicago areas), Bell Atlantic (Washington, D.C. area and Toms River, New Jersey), Pacific Bell (Orange County, South San Francisco Bay, and San Diego areas), and U S WEST (Denver and Portland areas).

¹¹ Cooper Affidavit at ¶ 18.

¹² Id. at ¶¶ 20-24.

¹³ Id. at Exhibit 3.

conclusion that the poorest, minority, urban communities are being altogether bypassed.¹⁴

Another pattern seems to consist of skipping entire counties. Counties with high income levels and lower minority concentrations appear to be the applicants' first choices. Examples of this include Orange County and South Bay, California, which are wealthier areas with a lower percentage of minorities than adjoining areas, and the Washington, D.C. metropolitan area, where Bell Atlantic is proposing to initially serve only certain Maryland and Virginia suburbs.¹⁵ In addition, deployment plans for Chicago exclude areas with the high concentrations of low-income and minority residents.¹⁶

III. Redlining is Inconsistent With the Goal of Universal Service in Telecommunications.

Section 1 of the Communications Act of 1934 created the Commission for the purpose of "regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at

¹⁴ In addition, Anthony L. Pharr, Counsel with Office of Communication of the United Church of Christ, examined Ameritech's application for the Chicago metropolitan area and found a similar pattern. See Declaration of Anthony L. Pharr.

¹⁵ Id. at ¶ 19.

¹⁶ See Declaration of Anthony L. Pharr.

reasonable charges."¹⁷ (emphasis added)

This objective of universal service applies no less to video dialtone than to basic telephone service, and perhaps more so.¹⁸ The goal has been oft-repeated by the Commission, and specifically with respect to video dialtone.¹⁹ Indeed, in its Second Video Dialtone Order, the Commission agreed that "encouraging universal service is an implicit goal of video dialtone" pursuant to the Commission's mandate under Section 1.²⁰ So obvious was this objective that the Commission proclaimed it unnecessary to state it as an independent goal of its video dialtone regulatory framework.²¹

Universal service is also a cornerstone of President Clinton's proposals for the National Information Infrastructure. One of the Administration's fundamental principles for telecommunications policy is "preserving and advancing universal

¹⁷ 47 U.S.C. § 151. See also Rural Telephone Coalition v. FCC, 838 F.2d 1307, 1315 (D.C. Cir. 1988) (recognizing that universal service is an important Commission objective).

¹⁸ Because of the wide range of applications expected, video dialtone is likely to become more essential than plain telephone service. See supra at 2-4.

¹⁹ See Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Further Notice of Proposed Rulemaking, First Report and Order, and Second Further Notice of Inquiry, 7 FCC Rcd 300, 304-05 (1991) ("First Video Dialtone Order"), appeals pending sub nom. Nat'l Cable Television Assoc., Inc. v. FCC, Nos. 91-1649 et al. (D.C. Cir. Nov. 4, 1993) ("The Commission should seek to make available nationwide, publicly accessible, advanced telecommunications networks able to provide adequate facilities at reasonable charges.").

²⁰ 7 FCC Rcd at 5806.

²¹ Id.

service to avoid creating a society of information 'haves' and 'have nots'." ²² The Administration supports making the advancement of universal service an explicit (rather than implicit) goal of Section 1 of the Communications Act. ²³ This definition would include making advanced services available to rural and urban lower income users. ²⁴

Vice President Gore has stressed the Administration's strong commitment to universal service. Citing a newspaper headline which asked whether the information superhighway would detour the poor, Gore emphatically responded, "Not if I have anything to do about it." ²⁵ Gore said that all carriers must be required to contribute, "on an equitable and competitively neutral basis, to the preservation and advancement of universal service," with the Commission responsible for implementing the framework to accomplish this. ²⁶

In a recent speech, Commission Chairman Reed E. Hundt echoed the importance of future interactive networks: "If these

²² White House, Administration White Paper on Communications Act Reforms, Jan. 27, 1994, available in LEXIS, News Library, Curnws File ("White Paper"). The Administration continues: "As we move rapidly into a world in which advanced telecommunications capabilities, well beyond traditional telephony, will soon be available to many Americans, it is critical that our universal service goals and policies advance as well." Id.

²³ Id.

²⁴ Id.

²⁵ Remarks to the Academy of Television Arts and Sciences, Jan. 11, 1994.

²⁶ Id. See also White Paper.

networks do not reach into every community and bring us together, they could end up dividing us further - leaving whole segments of our country without the skills and information necessary to prosper in our post-industrial economy."²⁷

Because of video dialtone's potential impact, universal service is an integral component of our future telecommunications policy. By not serving many lower-income and/or minority communities initially, video dialtone providers make it more unlikely that these communities will be served adequately in the future.

IV. Redlining Violates the Nondiscrimination Clause of Section 202(a) of the Communications Act of 1934 and is Inconsistent With the Public Interest.

Since it will take time to attain universal service, it is important that video dialtone networks are deployed and expanded on a nondiscriminatory basis. Indeed, Section 202(a) of the Communications Act prohibits unjust or unreasonable discrimination in the provision of communications facilities.²⁸

²⁷ First Annual Action for Children's Television Lecture on Media and Children, Harvard Graduate School of Education, Feb. 28, 1994.

²⁸ 47 U.S.C. § 202(a) makes it unlawful for any common carrier to:

make any unjust or unreasonable discrimination in . . . practices, classifications, regulations, facilities, or services for . . . communication service . . . or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

Section 202(a) is violated by the "redlining" being practiced by the telephone common carriers on the basis of minority and/or income status. Petitioners believe that such discrimination on the basis of either minority or income status is facially unreasonable.

Not only is it unlawful for the applicants to discriminate in this manner, but such discrimination undermines the very purposes for which the Commission authorized video dialtone. In announcing its video dialtone rules, the Commission sought to achieve three public interest goals: (1) improving the national telecommunications infrastructure; (2) promoting a competitive video market in order to stimulate technological and service innovation, thereby benefitting consumers, video programmers, and other service providers; and (3) fostering the development of a greater diversity of video programming.²⁹ These benefits are compromised if local telephone companies provide this technology in a discriminatory manner.

The fostering of competition between video dialtone and

While cable television companies are not regulated as common carriers, they are also prohibited from denying service to "any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides." The Cable Communications Policy Act of 1984, § 621(a)(3), 47 U.S.C. § 541 (1991).

²⁹ See Second Video Dialtone Order, 7 FCC Rcd at 5785-5786. Telephone common carriers made similar claims on their applications. See, e.g., Application of U S WEST Communications, Inc., for Authority Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Operate, Own and Maintain Facilities and Equipment to Provide Video Dialtone Service in Portions of the Minneapolis-St. Paul, Minnesota, Service Area, WPC-6922, Jan. 19, 1994, at 13-14.

cable television is an important public interest goal. If such competition begins in earnest, it should improve service, enhance consumer choice, and lower prices. But under proposed plans, low income and/or minority areas will be among the last to benefit, if they do at all, from such competition. These communities, which may be most eager for the price relief that competition could bring, will continue to find themselves beholden to a cable monopoly.

Vague promises of some future expansion are insufficient to achieve the positive effect of diverse programming. Equitable representation of lower income and/or minority communities is necessary from the start to ensure the diverse needs of a community are being met. First, without representative participation, these communities will miss a significant early opportunity to determine what will be available on the network. These communities should be given the chance to "vote" with their dollars and "eyeballs" in expressing their programming needs and interests. Second, without equitable representation of racially, ethnically, and economically diverse communities, non-minority and wealthier subscribers will not benefit from the diverse programming developed in response to the programming choices expressed by these groups.³⁰

Lastly, video dialtone has the potential to become even more

³⁰ Cf. Metro Broadcasting Co. v. FCC, 497 U.S. 547, 568 (1990) (in context of broadcasting, "benefits of [programming] diversity are not limited to the members of minority groups . . . the benefits redound to all members of the viewing and listening audience").

essential than cable television. Unlike cable, which has a limited number of channels and usually provides solely one-way programming, video dialtone has much greater channel capacity and could have the capability to carry an array of interactive services and programs. Some of the possible programming the public may benefit from include interactive educational programs, medical diagnostic services, and job training programs.³¹ Further, unlike cable, the common carrier requirements of video dialtone will facilitate the carriage of independent and community-based services -- services that are directly responsive to the local information needs of the communities. If redlining

³¹ See, e.g., First Video Dialtone Order, 7 FCC Rcd at 305 (Commission takes note of evidence of a "growing interest of education, medical, governmental and business institutions in public broadband networks"). These types of socially and economically important services are envisioned by the applicants themselves. For example, one of Ameritech's applications states:

The [video dialtone] network will facilitate the delivery of applications that address pressing societal needs such as health care networks to improve the quality and cost effectiveness of health care delivery, work-at-home applications that can help address environmental problems and advanced data networks and video conferencing services that will increase the productivity of American business.

Application of the Ameritech Operating Companies For authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct, operate, own and maintain, a video dialtone system within geographically defined areas in Illinois, WPC-6929, Jan. 31, 1994, at 4. See also Application of Pacific Bell For authority pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.01 of the Commission's Rules and Regulations to construct and maintain advanced telecommunications facilities to provide video dialtone service to selected communities in Los Angeles, California area, WPC-6915, Dec. 20, 1993, at 13-14 (claiming that their facilities will provide interactive capabilities such as distance learning and health services).

is permitted, however, minority and/or lower income persons will be denied, or forestalled from enjoying, these potential benefits of video dialtone.

V. Relief Requested

Petitioners ask the Commission to take the following steps, enumerated here and described in more detail below, to remedy the problems endemic in these applications. First, the Commission should formally announce its commitment to the goal of universal video dialtone service, and to nondiscriminatory deployment at each phase of its construction. Second, the Commission should issue an interpretive rule clarifying that existing statutes and rules already require nondiscriminatory deployment of facilities. Third, the Commission should issue a rule of internal procedure establishing guidelines for the appropriate review of § 214 video dialtone applications. These steps, which would not require notice and comment rulemaking procedures, would reassure the public that video dialtone will be built in an equitable manner, and give the affected industries guidelines for complying with existing standards.³²

Policy Statement. The Commission should issue a policy statement formally and explicitly endorsing the goal of universal video dialtone service. Further, recognizing that video dialtone

³² Petitioners, in a separate petition, also ask the Commission to initiate a rulemaking for reforming the § 214 process to facilitate public participation in resolving the issues raised by the construction of a broadband communications system. These petitions are filed concurrently.

will be deployed in stages, the Commission should announce its policy that each stage of video dialtone deployment be free of discrimination based on race or income level. Such a statement would provide guidance for the Commission's personnel as well as inform the public and the affected industries of the Commission's policy goals. The statement would not bind the Commission in deciding any particular § 214 application, and, because it would be exempt from full notice and comment procedure,³³ could be accomplished quickly and with a minimum expenditure of agency resources.

Interpretive Rule. The Commission should also issue an interpretive rule clarifying that, under 47 U.S.C. § 202(a) and 47 U.S.C. § 214, any proposed video dialtone facility must serve the public on a nondiscriminatory basis. The rule should advise applicants to include evidence enabling the Commission to make a reasoned determination that the planned deployment will not discriminate on the basis of income level, race, or ethnicity. Applicants could demonstrate nondiscrimination by providing the relevant census tract data for the proposed service area, as well as for those portions of the metropolitan area not included in the proposal. This census data would facilitate objective analysis by the Commission and by the general public. An interpretive rule would give the entities proposing to construct video dialtone facilities a clearer idea of their legal

³³ 5 U.S.C. § 553(b)(3)(A).

obligations. By clarifying the Commission's interpretation of the statutes and implementing regulations, the rule would serve to remind the affected parties of their existing duties. For that reason the interpretive rule, like the policy statement, would be exempt from full rulemaking procedure and could be made effective immediately upon publication in the Federal Register.³⁴

Rule of Internal Procedure. In addition, the Commission should issue an internal procedural rule establishing guidelines for its staff in handling video dialtone § 214 applications. Because the § 214 process is the vehicle by which the Commission ensures that the public interest is met, the Commission needs to screen applications thoroughly for those that do not appear to offer the public equitable, nondiscriminatory service. The Commission should therefore direct its staff to review each application to determine whether the proposed service redlines an economic class, race, or ethnic group. The staff should be instructed to remand applications that do not provide evidence of nondiscriminatory deployment to the applicants for further information and for the opportunity, if necessary, to amend the applications to bring them into conformity with the rules. Staff should be further instructed to bring applications for facilities that appear to discriminate on the basis of minority status or income to the attention of the Commission. Because agency procedural rules must be published,³⁵ the rule would not only

³⁴ 5 U.S.C. §§ 553 (b)(3)(A) and (d)(2).

³⁵ 5 U.S.C. § 552(a)(1).

provide guidance for those reviewing § 214 applications, but would also have the side benefit of informing the public and video dialtone providers of Commission policy.

VI. Conclusion

Petitioners ask the Commission to reiterate and enforce its policy goals of universal service and nondiscrimination with respect to video dialtone. Our goal is not to delay construction of advanced telecommunications networks. Rather, it is to ensure that the potential benefits of video dialtone will be available on an equitable basis. Ultimately, a commitment to universal service and nondiscriminatory deployment of video dialtone is a necessary pillar for constructing our national information infrastructure.

Respectfully submitted,

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May 23, 1994

STATE OF MARYLAND)
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COUNTY OF MONTGOMERY)

AFFIDAVIT OF DR. MARK N. COOPER

IN SUPPORT OF THE PETITION FOR RELIEF
OF THE
CENTER FOR MEDIA EDUCATION,
THE CONSUMER FEDERATION OF AMERICA,
THE UNITED CHURCH OF CHRIST
THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
NATIONAL COUNCIL OF LA RAZA

I, Dr. Mark N. Cooper, first being duly sworn, hereby state that the following information is true and correct to the best of my knowledge, information and belief:

I. BACKGROUND

1. I am President of Citizens Research, 504 Highgate Terrace, Silver Spring, Maryland 20904. I am also Director of Research of the Consumer Federation of America.
2. I hold a Ph. D. in Sociology from Yale University, an M. A. in Sociology from the University of Maryland, and a B.A. in English from the City College of New York.
3. Prior to founding Citizens Research, a consulting firm specializing in economic, regulatory and policy analysis, I spent four years as Director of Research at the Consumer Energy Council of America. Prior to that I was an Assistant Professor at Northeastern University teaching courses in Business and Society in both the College of Arts and Sciences and the School of Business. I have also been a Lecturer at the Washington College of Law of the American University, co-teaching a course in Public Utility Regulation.
4. I have testified on various aspects of telephone ratemaking before the Public Service Commissions of Arkansas, Colorado, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Manitoba, Maryland, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia and Washington, as well as the Federal Communications Commission, the Canadian

Radio-Telephone Commission and a number of state legislatures.

5. I have also testified on cable TV matters before the Congress and the Federal Communications Commission.

II. PURPOSE AND CONCLUSION

6. On behalf of the Center for Media Education and the Consumer Federation of America I have reviewed a sample of video dialtone applications to ascertain whether these services are being deployed on an equitable basis.
7. My analysis demonstrates a clear pattern in the initial video dialtone offerings of four of the Regional Bell Operating Companies (RBOCs) in which areas that are predominantly lower income and minority have not been provided video dialtone service. For each of the companies in at least two cities, I demonstrate that there has been a failure to serve the lowest income area (counties, if that is the way the video dialtone is defined, exchanges where those are identified by the company or census tracts, where I have identified the units of analysis). These districts also tend to be heavily minority.

III. METHODOLOGY

8. A complete analysis of all applications was not possible because the companies have not provided data in a format that would enable me to do very precise analysis. In many cases the maps provided by the company are crude to say the least. In no case has a telephone company systematically presented census tract data or zip code level detail. Given the very limited nature of the data provided by the companies, I have presented a series of analysis based a variety of forms of data. The diversity of approaches was dictated by the inconsistent quality and level of data made available by the companies. In order to ensure that my conclusions are robust, I have made comparisons in a variety of ways for at least one socio-economic characteristic in at least two cities served by each of the companies which have filed video dialtone proposals to date.
9. DATA SOURCES: I have relied on a variety of forms of data. I have used census data where available by matching the company maps with census tract maps and calculating the difference between served and unserved areas. In one case a computer mapping program was used to compare districts that are wholly served to others that are either partially served or not served at all. In several cases I relied strictly on telephone company provided income data. Finally, in one case I utilized telephone company marketing data.

10. DEFINITIONS: For purposes of this analysis, minority population is defined as black or hispanic. The mean percentage of persons in an area who are black or hispanic was calculated. Mean household income was calculated, except in those cases where telephone companies or consultants provided the income data as medians. In those cases, a median of the medians was calculated.¹
11. GEOGRAPHIC AREAS: Throughout the analysis an attempt has been made to identify the smallest and most directly relevant areas for comparison. Within any given geographic area this involves
- central cities separated from suburbs,
- Primary Metropolitan Statistical Areas separated from Consolidated Metropolitan Statistical Areas, and
- counties within states.
12. SPECIFIC AREAS: The specific methodologies for each of the areas described in Exhibits 1 and 2 are as follows.
13. For Indianapolis,² San Diego³ and Denver (minority percentages only)⁴ characteristics, I compared the maps provided by the company to census tract maps and identified specific census tracts which were proposed to be served. I counted as unserved areas are all others in the Consolidated Metropolitan Statistical Area (CMSA). In all cases the statistics calculated are means for

¹ For categorical data (census tracts or exchanges) where medians are provided, the best measure of the central tendency is to identify the middle (median) cell in the distribution and interpolate the median value in that cell from the data. I call this the median of the medians.

² In the Matter of the Ameritech Operating Companies For Authority pursuant to Section 214 of the Communications Act of 1934, as amended, to construct, operate, own and maintain, a video dialtone system within geographically defined areas in Indiana, WPC 6928.

³ In the Matter of the Application of Pacific Bell for Authority pursuant to Section 214 of the Communications Act of 1934 and section 63.01 of the Commission's Rules and Regulations, to Construct and Maintain Advanced Telecommunications Facilities to Provide Video Dialtone Service to Selected Communities in San Diego, California, WPC-6916.

⁴ In the Matter of the Application of U S West Communications Inc., for Authority Under Section 214 of the Communications Act of 1934, as Amended, to Construct, Operate Own and Maintain Facilities and Equipment to Provide Video Dialtone Service in Portions of the Denver, Colorado, Service Area, WPC-6919.